

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
RICHARD W. METZGER, )  
d.b.a. Fairhome Apartments, )  
Appellant, )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 91

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$25 civil penalty for an alleged violation of smoke emission standards in respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) at a hearing in the Seattle offices of respondent at 10:30 a.m., June 1, 1972.

Appellant appeared. Respondent was represented by its counsel, Keith D. McGoffin. Shirley Marshall, Seattle court reporter, recorded the proceedings.

The matter became a formal hearing after respondent said it

1 saw no compromise possible in an informal conference. Witnesses were  
2 sworn and testified. Exhibits were admitted.

3 On the basis of testimony heard and exhibits examined, the Pollution  
4 Control Hearings Board prepared Proposed Findings of Fact, Conclusions  
5 and Order which were submitted to the appellant and respondent on  
6 July 1, 1972. No objections or exceptions to the Proposed Findings,  
7 Conclusions and Order having been received, the Pollution Control  
8 Hearings Board makes and enters the following:

9 FINDINGS OF FACT

10 I.

11 For at least five consecutive minutes during the morning of  
12 January 5, 1972, the boiler chimney of appellant's apartment house at  
13 615 - 14th Avenue East, Seattle, King County, emitted black smoke of  
14 density equal to No. 5 on the Ringelmann Scale.

15 II.

16 Notice of Violation No. 4446 was issued by an inspector of  
17 respondent to the apartment house manager. The inspector informed the  
18 manager that future Notices of Violation could be avoided in the event  
19 of future boiler malfunctions by contacting respondent in accordance  
20 with the procedure outlined in Section 9.03(c)(2) of respondent's  
21 Regulation I. There was no civil penalty imposed in connection with  
22 Notice of Violation No. 4446.

23 III.

24 On January 12, 1972, appellant's apartment house chimney emitted,  
25 for a period of at least six minutes, black smoke of density equal to  
26 No. 5 on the Ringelmann Scale. Notice of Civil Penalty No. 203, in the

1 amount of \$25, was imposed on appellant.

2 IV.

3 On both January 5 and 12, 1972, appellant immediately summoned  
4 boiler service repairmen to the apartment to correct the malfunctions.  
5 On neither date, however, did appellant or his apartment house manager  
6 contact respondent as outlined in Section 9.03(c)(2) of respondent's  
7 Regulation I.

8 From these Findings of Fact, the Pollution Control Hearings Board  
9 comes to these

10 CONCLUSIONS

11 I.

12 Appellant was in violation of Section 9.03(a)(1) of respondent's  
13 Regulation I on January 5 and 12, 1972.

14 II.

15 Appellant's apartment house manager was informed on January 5,  
16 1972 of the procedure she should follow to avoid a violation notice in  
17 the event of a future boiler malfunction, but this procedure was not  
18 followed in the malfunction of January 12, 1972. Appellant is to be  
19 commended for his prompt efforts to have the boiler repaired, but  
20 failure to notify respondent of a malfunction leaves that Agency with  
21 no choice except to issue a Notice of Violation when it receives citizen  
22 complaints concerning heavy smoke caused by the malfunction.

23 III.

24 The civil penalty under appeal, although for a second offense, is  
25 one tenth of the maximum allowable penalty which could have been  
26 imposed and, in view of all the circumstances, is reasonable.

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 THEREFORE, the Pollution Control Hearings Board issues this

2 ORDER

3 The appeal is denied and respondent's Notice of Civil Penalty  
4 No. 203 is sustained.

5 DONE at Bellevue, Washington this 1st day of August, 1972.

6 POLLUTION CONTROL HEARINGS BOARD

7 Matthew W. Hill  
8 MATTHEW W. HILL, Chairman

9 James T. Sheehy  
10 JAMES T. SHEEHY, Member

11 Walt Woodward  
12 WALT WOODWARD, Member

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27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER